

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

EMMANUEL KHAAFIDH, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:06-CV-1848 CAS
)	
WILLIAM SARTI, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant William Sarti’s motion to dismiss or in the alternative for stay. For the following reasons, the Court will deny defendant’s motion without prejudice.

Defendant Sarti moves the Court to dismiss this action or in the alternative stay the case against him because he is currently assigned to a military base in Tucson, Arizona on active duty with the Armed Forces of the United States. According to defendant, he is entitled to a dismissal or stay of this action under the Servicemembers Civil Relief Act, 50 App. U.S.C. §§ 501, et seq. (the “Act”).

Section 522(b)(2) of the Act states:

(2) Conditions for stay.

An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents


appearance and that military leave is not authorized for the servicemember at the time of the letter.

50 U.S.C. § 522(b)(2).

As an initial matter, the Court is not aware that the Act provides that a servicemember may have an action dismissed based on his military status. In addition, defendant has not met the conditions for a stay imposed by the Act. Defendant has not provided the Court with any communication setting forth facts explaining the manner in which his current military duties materially affect his ability to appear in these proceedings and when he will be available. Further, defendant has not provided the Court with a letter or other communication from his commanding officer explaining why defendant's current military duties prevent him from appearing and that he is not eligible for leave. Because defendant has failed to comply with Section 522(b)(2) of the Servicemembers Civil Relief Act his motion to dismiss or in the alternative for a stay should be denied without prejudice.

Accordingly,

IT IS HEREBY ORDERED that defendant William Sarti's Motion to Dismiss or In the Alternative For Stay is **DENIED without prejudice**. [Doc. 37]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 6th day of April, 2007.